CORRIGENDUM

Bangalore dated the 22nd December 1967.

S. O. 27.—In the "Mysore Labour Service (Recruitment) Rules 1967" issued in Notification No. LMA 76 LET 62 (ii) dated 17th August 1967 and published as No. G.S.R. 414 dated 17th August 1967 in the *Mysore Gazette*, dated 21st September 1967;

(1) in the entries relating to "Labour Inspectors" for the figures "33⅓" in column 2 substitute the figure "33⅓"

(2) in the entries relating to "1st Division Clerks" in column 3 for the existing entry below "Probation—two years" and above "For Promotion" substitute the following entry—

"Must pass the departmental examination *viz.* Accounts Higher and Labour Laws within the period of probation."

(3) in the entries relating to "Stenographers" in column 2 below the existing entry add the following entry—

"and 33⅓ per cent by promotion from the cadre of Typists" and in column 3 for the existing entry relating to "direct recruitment" substitute the following entry—

"Probation-2 years, during which period the following departmental examinations should be passed:—

Accounts Higher"

4) in the entries relating to "Typists" in column 3 for the existing entry below 'Probation 2 years" substitute the following entry—

"Following departmental examinations should be passed during the period of Probation—Accounts-Lower".

[No. FCL 122 LET 67.]

By Order and in the name of the Governor of Mysore.

1748 G. G. PUROHIT, *Under Secy.*

GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT (LABOUR)

Labour Dispute.—Industrial Dispute between the Workmen and the Management of Mysore Lamp Works, Bangalore-3

Award of the Industrial Tribunal, Bangalor —Published.

Read the following papers:—

( ) Letter No. AIT 775/67-68, dated 11th December 1967 from Sri V. C. Ramachandran Presiding Officer, Additional Industrial Tribunal, Bangalore.

BEFORE THE ADDITIONAL INDUSTRIAL TRIBUNAL, BANGALORE.

Dated 11th December 1967.

Present:

Sri V. C. Ramachandran B.A. B.Sc. (London) Ba.-at.-Law, ... Presiding Officer

Miscellaneous Reference. No. 2 of 1967.

Workmen of the Mysore Lamp Works, Bangalor-3...*I Party.*

Vs.

The Management of the Mysore Lamp Works, Bangalore-3 ... *II Party.*

Appearances.

For I Party.—Sri Krishnaiah, Advocate, Bangalore.

For II party.—Sri B. R. Puttananjappa, Hon. Secretary, Mysore State Employers' Association, Bangalore.

Reference

Government Order No. FCL 308 LLD 66 Bangalore dated 29th August 1967.

DECISION.

The Government of Mysore referred a dispute for interpretation by this tribunal under Sec.36 A of the Industrial Disputes Act, 1947 in G.O. No. FCL 308 LLD 66, dated 29th August 1967. The Reference is one for interpretation of a Settlement between the workmen and the management of the Mysore Lamp Works, Bangalore, although it has been wrongly referred to as an industrial dispute. This tribunal took it on file and registered it as A I.D. N 23 of 1967, which is subsequently renumbered as Miscellaneous Reference No.2 of 1967 as the Reference is one for interpretation of the Settlement and not for adjudication of an industrial dispute. The point of dispute referred to this tribunal is as follows.—

> "Is the management of the Mysore Lamp Works Ltd, Bangalore, justified in refusing the claims of workers that they are at liberty to choose such longer period of leave as per Sec. 78 (i) of the Factories Act, 1948, irrespective of the terms of the existing two agreements dated 15th March 1963 and 23rd April 1964 ?
>
> If not, to what quantum of leave are the workers entitled?"

No doubt, the wordings of the points of dispute are not very happy but both the parties understood that what the tribunal is called upon to do is only the interpretation of the settlement entered into between the parties and not any adjudication of a dispute. As a matter of fact it was on the consent of both the parties that for the purpose of interpretation of the settlement the matter has been referred under Sec. 36-A, to this tribunal for removing the difficulties and doubts in the said settlement.

2. The parties entered into a Settlement under Sec. 18 (1) of the Industrial Disputes Act on 15th March 1963. The matter with which we are now concerned is clause 15 of the said settlement and only with regard to the annual leave that the workmen are entitled to. Under the settlement, monthly-rated employees are entitled to annual leave with wages or pay as per the provisions of the Factories Act. Subsequent to the settlement, the management granted leave to the workers at the rate of one day for 20 days work in the previous calendar year although the employees were getting privilege leave of one month for each calender year of service prior to the settlement. The workmen

were aggrieved by this change of service conditions not warranted by the settlement and made a numb r of representations to the II Party urging that the works Service Rules alone are applicable to them The parties then entered into another settlement on 23rd April 1964 under which they agreed that the clause with regard to annual leave will be got clarified and setiled by legal interpretation or by any other legal process they deem fit. As the works Service Rules provide for a longer leave with wages than provided in the Factories Act, the workmen contend that they are entitled to leave with wages as per the Works Service Rules and not under Sec.79 of the Factories Act. Therfore they pray that a direction may be given as prayed for by them with costs.

3. The management contend that the workmen are entitled to annual leave with wages or pay as provided in the Factories Act *i.e*, at the rate of one day for 20 days' work in the previous year. The I Party has been demanding higher quantum of leave basing the claim on the Works Service Rules which is contrary to the Settlement reached between the parties. It is only Sec.79 of the Factories Act which lays down the quantum of leave with wages and the workmen are entitled to annual leave as laid down in that section. Hence, the II Party prays that the claim of the I Party workmen be rejected and the reference be answered in their favour.

4. Under the settlement dated 15th March 1963, the monthly rated staff are entitled to annual leave with wages or pay as per the provisions of the Factories Act. The Factories Act no doubt, prescribes the annual leave which the workers are entitled to under section 79, according to which, an adult who has worked for a period of 240 days or more in a factory during a calendar year, shall be allowed during the subsequent calendar year, leave with wages calculated at the rate of one day for every 20 days of work performed by him during the previous calendar year. It would be noticed, however, that under section 78 of the Factories Act the provision for annual leave with wages under section 79 shall not operate to the prejudice of any right to which a worker may be entitled to under any other law or under the terms of any award, agreement or contract of service, provided that when such an award, agreement or contract of service provides for a longer annual leave with wages than what is provided under section 79, the worker shall be entitled to such annual leave. It is not disputed that the workers have been governed by the Work Service Rules applicable to Government

Industrial concerns and according to these Rules, the monthly-rated staff were allowed privilege leave of one month's duration with full pay for every year of continuous service. Hence, the Works Service Rules under which the workers were governed, gave them a longer annual leave than what was given under section 79 of the Factories Act. The settlement contemplates applicability of the provisions of the Factories Act which means applicability of both section 78 as well as section 79 of the Factories Act. If both sections are applied, then it is obvious that the workers are entitled to longer annual leave under section 78, and section 79 of the Factories Act does not come into operation when there is a contract of service which grants them a longer annual leave. It seems to me therefore that the settlement can only be interpreted to mean that the workmen are governed by the Works Service Rules with regard to their annual leave if under those Rules the leave exceeds the leave granted to them under section 79 of the Factories Act. The learned counsel for the management contended that if it were so, nothing prevented the parties from stating that the annual leave will be according to the Works Service Rules applicable to Government Industrial concerns. It must be remembered however that the Factories Act is liable to be changed from time to time and if the conditions of leave Rules are more favourable under the Factories Act in future, then the workmen can opt to the benefits under the Factories Act. In other words, the workmen are entitled to whichever offer them better facilities, either the Works Service Rules or the provisions under section 79 of the Factories Act. It is well-recognised that industrial law favours conferring better benefits on workmen and does not favour curtailing of the rights already possessed by the workmen unless there is a clear and unambiguous intention of the parties to do so. In the instant case the workmen's rights which they enjoyed, have to be preserved and there is nothing either in the settlement or in the Factories Act which takes away those rights.

5. My answer to the issues are :—

(1) The intention of the parties was that the quantum of leave should be continued to be governed by the Works Service Rules.

(2) Reference to the provisions of the Factories Act can only mean that both section 78 and section 79 should be brought into play and the workers would be entitled to the longer leave which they had enjoyed under the Works Service Rules.

6. In the result my interpretation of the Settlements is that the monthly-rated staff of the Mysore Lamp Works, Bangalore are entitled under the settlements dated 15th March 1963 and 23rd April 1964 to the longer period of leave which they had enjoyed prior to the settlement, under the Works Service Rules applicable to Government Industrial Concerns, *viz.*, Privilege Leave of one month's duaration with full pay for every year of continuous service which leave can be accumulated up to a limit of 3 months on the management being satisfied of the good conduct and regular attendance of the employee and provided also that the leave is given when it is convenient to the management and when it is not detrimental to the operation of the department in which the employee is engaged.

7. There will be no order as to costs as the Reference is by mutual consent of both the parties in regard to the interpretation of the settlements.

V. C. RAMACHANDRAN,
Presiding Officer,
Addl. Industrial Tribunal,
Bangalore.

11-12-1967.